



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Sent via Email and U.S. Mail

REPLY TO THE ATTENTION OF:

WN-16J

Ms. Tiffani Kavalec, Chief  
Division of Surface Water  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, Ohio 43216-1049

SEP 15 2015

Re: U.S. Environmental Protection Agency Review of the NPDES Draft General Permit  
"Authorization for Discharges Associated with Coal Surface Affectment Activities", Permit  
No. OHM000004

Dear Ms. Kavalec:

The U.S. Environmental Protection Agency (EPA) has conducted a preliminary review of the above-referenced National Pollutant Discharge Elimination System (NPDES) draft permit and supporting documents received on August 21, 2015. The draft permit has not yet been put on public notice. We understand that OEPA has been working for over a year on this permit with other stakeholders. You requested feedback on the draft permit from EPA by September 11, 2015.

The draft general permit for Discharges Associated with Coal Surface Affectment Activities is a significant action that will affect numerous discharges and water bodies in Ohio. EPA has done its best, in the limited time we have had the draft permit, to conduct a thorough review. Our preliminary comments on the draft permit are provided in Enclosure A. We commit to continuing our review and providing you with any additional comments by September 25, 2015. As discussed in our meeting on September 2, 2015, we would be pleased to discuss our comments and approaches for addressing the comments in a revised draft permit, at your convenience. We are also open to participating in any future stakeholder meetings that you may schedule concerning this permit.

Thank you for all the work you have done on this draft permit and your thoughtful consideration of our comments.

Sincerely,

Kevin M. Pierard, Chief  
NPDES Programs Branch

Enclosure

cc: Erin Sherer, OEPA, via email  
Sara Hise, OEPA, via email

## Enclosure A

U.S. Environmental Protection Agency

Preliminary Review NPDES Draft General Permit

“Authorization for Discharges Associated with Coal Surface Affectment Activities”

Permit No. OHM000004

In our preliminary review of the draft general permit, EPA has identified the following issues. Further review of the draft permit is continuing. EPA will provide any additional comments by September 25, 2015.

- a. ***Reasonable Potential Analysis (RPA) for conductivity:*** OEPA conducted an RPA to determine if a water quality based effluent limit (WQBEL) for conductivity would be required in the draft general permit. OEPA's finding is that no limit is needed. It appears that OEPA's RPA pooled all of the data that was reported over the course of the existing general permit and treated each data point as an individual result. The renewed general permit must include sufficiently stringent limits to prevent all discharges from having the reasonable potential to cause or contribute to an excursion of water quality standards. We looked at the data outfall-by-outfall, and found that the projected effluent quality at 41% of the outfalls demonstrate the reasonable potential to cause or contribute to exceedances of the water quality criteria for total dissolved solids (or conductivity as it is translated in Ohio's water quality standards). Given that general permits are required to include the same WQBELs for all sources (40 CFR 122.28(a)(3), 122.44), the permit should contain a WQBEL for conductivity (or TDS) using either the numeric criteria of 1500 mg/L TDS or 2400  $\mu$ S/cm conductivity.
- b. ***Impaired Waters:*** Several watersheds in Ohio are listed as impaired, with causes being related to coal mining and/or the pollutants typically discharged by coal mining operations. The draft permit does not contain any language as to how OEPA would evaluate an application for renewed or new coverage that would discharge to an impaired water. The permit cannot authorize discharges that would contribute to an existing impairment (40 CFR 122.4(i), 122.44(d)(1)). Discharges to waters that are impaired due to pollutants typically discharged from coal mining operations should be excluded from coverage.
- c. ***Contents of NOI:*** OEPA should require each NOI applicant to provide a complete analysis for metals (see list below). To date, OEPA does not have information regarding effluent quality from facilities eligible for coverage under the general permit. Applicants are required to characterize their discharge under 40 CFR 122.21(g), 122.21(k). Requiring each permittee to conduct this monitoring once per permit term will generate a data representative of the discharges and the burden on permittees can be minimized by limiting monitoring to once per permit term. Metals that should be monitored once per permit term: Aluminum, Barium, Boron, Cobalt, Iron, Magnesium, Molybdenum, Tin, Titanium, Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, and Zinc.
- d. ***Public Notice:*** We understand that OEPA intends to public notice the general permit, but not NOI applications that are submitted. Members of the public may be interested in surface coal mining activities occurring in the state. We strongly urge OEPA to make the NOI applications available to the public.

## Enclosure A

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*e. Eligibility*

1. The Permit Area language should be changed to indicate that the permit covers only eligible facilities within the State of Ohio.
2. The eligibility statement seems to include coal preparation areas (as this is contemplated in 40 CFR 434). More specific exclusions should be added to this paragraph to clarify which discharges are covered by the general permit.
3. Strike “may” from the last sentence of the eligibility paragraph B.
4. B.1.a and B.1.b: the activities are not discharges; we suggest using “mine drainage” and defining the mining area similar to 40 CFR 434.
5. The activity description at B.1.a includes “removal of coal from coal refuse piles” but coal refuse piles appear to be excluded under the exclusions I.A.2.
6. Clarify that discharges to ONRW’s and OSW’s are not eligible.

*f. Monitoring Requirements*

1. Flow and precipitation must be measured daily and during discharge and precipitation events.
2. Please include duration of discharge in the limits and monitoring table.
3. As noted earlier, a WQBEL for TDS and/or conductivity is required. Therefore, the permit should include monitoring requirements for TDS and/or conductivity.

*g. Discharge authorization and enforcement:*

1. II.A: The Deadlines for Notification paragraph includes language that seems to imply some limitations on enforcement authority. This language should be stricken.
2. Under “Failure to Notify,” such dischargers would also be in violation of the Clean Water Act.
3. Renotification: This language implies that facilities covered under the OHM000003 would automatically be covered under this draft permit. This must be revised to clarify that facilities covered under OHM000003 must apply for coverage like any other facility.

*h. Procedural:*

1. The modification paragraph should include more information on how OEPA will process modifications.
2. The termination paragraph needs language indicating that OEPA is also able to terminate the permit for cause.

*i. Effluent Limitations Guidelines*

1. Regarding alternative effluent limitations, we suggest incorporating the requirement in 40 CFR 434.63(e): the operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in paragraphs (a), (b), (c), and (d) of this section.

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2. The fact sheet should explain how a permittee would demonstrate that an alternative pH limit would not affect in-stream pH.

*j. Stormwater:*

1. In the stormwater portion of the permit under Drainage, ii, OEPA states as follows: “For each area of the facility that generates storm water discharges with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants that are likely to be present in storm water discharges.” The fact sheet should explain what OEPA means by “a reasonable potential for containing significant amounts of pollutants” and how this situation would be treated.
2. Certain discharges described in Part I.B.1.b., such as discharges from the construction of staging areas for structures and new and improved access roads are considered discharges from construction activities listed in 40 CFR 122.26(b)(14)(x) and (b)(15)(i). These discharges are subject to the technology-based effluent limitations in the Effluent Guidelines and New Source Performance Standards for the Construction and Development Point Source Category found in 40 CFR 450. The draft general permit includes the effluent limitations guidelines related to soil and erosion control, soil stabilization and dewatering, and subjects all storm water discharges to the guidelines whether the discharge is subject to the guidelines or not.

When EPA reissued its 2015 Multi-Sector General Permit for Storm Water Discharges from Industrial Activities, it addressed discharges from construction activities for mining Sectors G (metal), H (Coal) and J (Non-Metallic). The MSGP now distinguishes the discharges from land-disturbing activities in the mining context that are subject to 40 CFR 450 from other storm water discharges from land-disturbing activities that are controlled based on the best professional judgment of the permit writer.

Therefore, EPA recommends clarifying the permit to include separate parts that address the technology based effluent limits and the requirement to develop a SWPPP. For more detail, See Parts 5 (SWPPP) and Part 8.H (Sector-Specific Requirements for Coal Mines). EPA’s rationale for these revisions is found on pages 67-70 of the Fact Sheet for the MSGP.

The permit and fact sheet are located at:

[http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015\\_finalpermit.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_finalpermit.pdf) and [http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015\\_fs.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_fs.pdf).

*k. Standard Conditions*

1. Please explain in the fact sheet how OEPA will implement the Standard condition at F: “Requiring an individual permit or an alternative general permit”, specifically language in the first paragraph “Any interested person may petition the Director to take action under this paragraph”. It is our understanding that

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OEPA does not intend to public notice NOI applications. Therefore, it is unclear how an interested person would know that an NOI application has been submitted and obtain the application. As stated above, OEPA should have some mechanism to notify the public of NOI applications.

2. Include U.S. EPA under the inspection and entry paragraph, and the duty to provide information paragraph.
3. Definitions – the following terms need to be defined:
  - i. Surface Affectment
  - ii. Mining methods:
    1. Contour
    2. Strip
    3. Auger
    4. Mountaintop removal
    5. Box cut
    6. Open pit
    7. Area
  - iii. Impoundments
  - iv. Dams
  - v. Ventilation shafts
  - vi. Entryways
  - vii. Dumps
  - viii. Stockpiles
  - ix. Overburden piles,
  - x. Spoil banks
  - xi. Re-mining
  - xii. Controlled surface mine drainage (and non-controlled)
  - xiii. Steep slope
  - xiv. Reclamation area